

HOUSE No. 1404

The Commonwealth of Massachusetts

PRESENTED BY:

Anne M. Gobi

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the operation of a snow vehicle or recreational vehicle under the influence of alcoholic or narcotic substances.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Anne M. Gobi	5th Worcester
Todd M. Smola	1st Hampden
Jennifer M. Callahan	18th Worcester
Geraldo Alicea	6th Worcester
Denise Provost	27th Middlesex
John W. Scibak	2nd Hampshire
Stephen R. Canessa	12th Bristol
Bruce E. Tarr	First Essex and Middlesex
Elizabeth A. Malia	11th Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1462 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE OPERATION OF A SNOW VEHICLE OR RECREATIONAL VEHICLE UNDER THE INFLUENCE OF ALCOHOLIC OR NARCOTIC SUBSTANCES.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority
of the same, as follows:*

1 SECTION 1. Chapter 90B of the General Laws is hereby amended by inserting after section 26
2 the following section:—

3 Section 26A. (1) (a) (1) Whoever operates a snow or recreational vehicle on the lands, waters or ways,
4 whether public or private, within the commonwealth while under the influence of intoxicating liquor, or
5 of marijuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter
6 ninety-four C, or the vapors of glue shall be punished by a fine of not less than \$500 nor more than
7 \$5,000 or by imprisonment for not more than two and one-half years, or both such fine and imprisonment.

8 There shall be an assessment of \$125 against a person who, by a court of the commonwealth, is convicted
9 of, is placed on probation for, or is granted a continuance without a finding for or otherwise pleads guilty
10 to or admits to a finding of sufficient facts of operating a snow or recreation vehicle while under the
11 influence of intoxicating liquor, marijuana, narcotic drugs, depressants or stimulant substances pursuant
12 to the provisions of this section; provided, however, that moneys collected pursuant to said assessment
13 shall be deposited by the court with the treasurer into the Head Injury Treatment Services Trust Fund
14 established by section 59 of chapter 10. In the discretion of the court, an assessment pursuant to this
15 paragraph may be reduced or waived only upon a written finding of fact that such payment would cause
16 the person against whom the assessment is imposed severe financial hardship. Such a finding shall be
17 made independently of a finding of indigency for purposes of appointing counsel. If the person is

18 sentenced to a correctional facility in the commonwealth and the assessment has not been paid, the court
19 shall note the assessment on the mittimus.

20 If the defendant has been previously convicted or assigned to an alcohol or controlled substance
21 education, treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction
22 because of a like violation within ten years preceding the date of the commission of the offense for which
23 he has been convicted, the defendant shall be punished by a fine of not less than six hundred nor more
24 than ten thousand dollars and by imprisonment for not less than sixty days nor more than two and one-
25 half years; provided, however, that the sentence imposed upon such person shall not be reduced to less
26 than thirty days, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or
27 receive any deduction from his sentence for good conduct until such person has served thirty days of such
28 sentence, unless otherwise sentenced to an intermediate sanction as promulgated by the sentencing
29 commission established in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-
30 three; provided, further, that the commissioner of correction may, on the recommendation of the warden,
31 superintendent, or other person in charge of a correctional institution, or the administrator of a county
32 correctional institution, grant to an offender committed under this subdivision a temporary release in the
33 custody of an officer of such institution for the following purposes only: to attend the funeral of a relative;
34 to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said
35 institution; to engage in employment pursuant to a work release program; or for the purposes of an
36 aftercare program designed to support the recovery of an offender who has completed an alcohol or
37 controlled substance education, treatment or rehabilitation program operated by the department of
38 correction; and provided, further, that the defendant may serve all or part of such thirty day sentence to
39 the extent such resources are available in a correctional facility specifically designated by the department
40 of correction for the incarceration and rehabilitation of drinking drivers.

41 If the defendant has been previously convicted or assigned to an alcohol or controlled substance
42 education, treatment, or rehabilitation program by a court of the commonwealth, or any other jurisdiction
43 because of a like offense two times within ten years preceding the date of the commission of the offense
44 for which he has been convicted, the defendant shall be punished by a fine of not less than one thousand
45 nor more than fifteen thousand dollars and by imprisonment for not less than one hundred and eighty days
46 nor more than two and one-half years or by a fine of not less than one thousand nor more than fifteen
47 thousand dollars and by imprisonment in the state prison for not less than two and one-half years nor
48 more than five years; provided, however, that the sentence imposed upon such person shall not be reduced
49 to less than one hundred and fifty days, nor suspended, nor shall any such person be eligible for
50 probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall
51 have served one hundred and fifty days of such sentence, unless otherwise sentenced to an intermediate
52 sanction as promulgated by the sentencing commission established in chapter four hundred and thirty-two

of the acts of nineteen hundred and ninety-three; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative, to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided, further, that the defendant may serve all or part of such one hundred and fifty days sentence to the extent such resources are available in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense three times within ten years preceding the date of the commission of the offense for which he has been convicted the defendant shall be punished by a fine of not less than one thousand five hundred nor more than twenty-five thousand dollars and by imprisonment for not less than two years nor more than two and one-half years, or by a fine of not less than one thousand five hundred nor more than twenty-five thousand dollars and by imprisonment in the state prison for not less than two and one-half years nor more than five years; provided, however, that the sentence imposed upon such person shall not be reduced to less than twelve months, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until such person has served twelve months of such sentence, unless otherwise sentenced to an intermediate sanction as promulgated by the sentencing commission established in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-three; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided, further, that the defendant may serve all or part of such twelve months sentence to the extent that resources are available in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

88 If the defendant has been previously convicted or assigned to an alcohol or controlled substance
89 education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction
90 because of a like offense four or more times within ten years preceding the date of the commission of the
91 offense for which he has been convicted, the defendant shall be punished by a fine of not less than two
92 thousand nor more than fifty thousand dollars and by imprisonment for not less than two and one-half
93 years or by a fine of not less than two thousand nor more than fifty thousand dollars and by imprisonment
94 in the state prison for not less than two and one-half years nor more than five years; provided, however,
95 that the sentence imposed upon such person shall not be reduced to less than twenty-six months, nor
96 suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any
97 deduction from his sentence for good conduct until he shall have served twenty-six months of such
98 sentence, unless otherwise sentenced to an intermediate sanction as promulgated by the sentencing
99 commission established in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-
100 three; provided, further, that the commissioner of correction may, on the recommendation of the warden,
101 superintendent, or other person in charge of a correctional institution, or the administrator of a county
102 correctional institution, grant to an offender committed under this subdivision a temporary release in the
103 custody of an officer of such institution for the following purposes only: to attend the funeral of a relative;
104 to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said
105 institution; to engage in employment pursuant to a work release program; or for the purposes of an
106 aftercare program designed to support the recovery of an offender who has completed an alcohol or
107 controlled substance education, treatment or rehabilitation program operated by the department of
108 correction; and provided, further, that the defendant may serve all or part of such twenty-six months
109 sentence to the extent that resources are available in a correctional facility specifically designated by the
110 department of correction for the incarceration and rehabilitation of drinking drivers.

111 A prosecution commenced under the provisions of this subparagraph shall not be placed on file or
112 continued without a finding except for dispositions under section twenty-six D. No trial shall be
113 commenced on a complaint alleging a violation of this subparagraph, nor shall any plea be accepted on
114 such complaint, nor shall the prosecution on such complaint be transferred to another division of the
115 district court or to a jury-of-six session, until the court receives a report from the commissioner of
116 probation pertaining to the defendant's record, if any, of prior convictions of such violations or of
117 assignment to an alcohol or controlled substance education, treatment, or rehabilitation program because
118 of a like offense; provided, however, that the provisions of this paragraph shall not justify the
119 postponement of any such trial or of the acceptance of any such plea for more than five working days
120 after the date of the defendant's arraignment. The commissioner of probation shall give priority to
121 requests for such records.

At any time before the commencement of a trial or acceptance of a plea on a complaint alleging a violation of this subparagraph, the prosecutor may apply for the issuance of a new complaint pursuant to section thirty-five A of chapter two hundred and eighteen alleging a violation of this subparagraph and one or more prior like violations. If such application is made, upon motion of the prosecutor, the court shall stay further proceedings on the original complaint pending the determination of the application for the new complaint. If a new complaint is issued, the court shall dismiss the original complaint and order that further proceedings on the new complaint be postponed until the defendant has had sufficient time to prepare a defense.

If a defendant waives right to a jury trial pursuant to section twenty-six A of chapter two hundred and eighteen on a complaint under this subdivision he shall be deemed to have waived his right to a jury trial on all elements of said complaint.

(2) Except as provided in subparagraph (4) the provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person charged with a violation of subparagraph (1) and if said person has been convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction within a period of ten years immediately preceding the commission of the offense with which he is charged.

(3) Notwithstanding the provisions of section six A of chapter two hundred and seventy-nine, the court may order that a defendant convicted of a violation of subparagraph (1) be imprisoned only on designated weekends, evenings or holidays; provided, however, that the provisions of this subparagraph shall apply only to a defendant who has not been convicted previously of such violation or assigned to an alcohol or controlled substance education, treatment or rehabilitation program within ten years preceding the date of the commission of the offense for which he has been convicted.

(4) Notwithstanding the provisions of subparagraphs (1) and (2), a judge, before imposing a sentence on a defendant who pleads guilty to or is found guilty of a violation of subparagraph (1) and who has not been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense two or more times within ten years of the date of the commission of the offense for which he has been convicted, shall receive a report from the probation department of a copy of the defendant's driving record, the criminal record of the defendant, if any, and such information as may be available as to the defendant's use of alcohol and may, upon a written finding that appropriate and adequate treatment is available to the defendant and the defendant would benefit from such treatment and that the safety of the public would not be endangered, with the defendant's consent place a defendant on probation for two years; provided, however, that a condition for such probation shall be that the defendant be confined for no less than

fourteen days in a residential alcohol treatment program and to participate in an outpatient counseling program designed for such offenders as provided or sanctioned by the division of alcoholism, pursuant to regulations to be promulgated by said division in consultation with the department of correction and with the approval of the secretary of health and human services or at any other facility so sanctioned or regulated as may be established by the commonwealth or any political subdivision thereof for the purpose of alcohol or drug treatment or rehabilitation, and comply with all conditions of said residential alcohol treatment program. Such condition of probation shall specify a date before which such residential alcohol treatment program shall be attended and completed.

Failure of the defendant to comply with said conditions and any other terms of probation as imposed under this section shall be reported forthwith to the court and proceedings under the provisions of section three of chapter two hundred and seventy-nine shall be commenced. In such proceedings, such defendant shall be taken before the court and if the court finds that he has failed to attend or complete the residential alcohol treatment program before the date specified in the conditions of probation, the court shall forthwith specify a second date before which such defendant shall attend or complete such program, and unless such defendant shows extraordinary and compelling reasons for such failure, shall forthwith sentence him to imprisonment for not less than two days; provided, however, that such sentence shall not be reduced to less than two days, nor suspended, nor shall such person be eligible for furlough or receive any reduction from his sentence for good conduct until such person has served two days of such sentence; and provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; or to engage in employment pursuant to a work release program. If such defendant fails to attend or complete the residential alcohol treatment program before the second date specified by the court, further proceedings pursuant to said section three of said chapter two hundred and seventy-nine shall be commenced, and the court shall forthwith sentence the defendant to imprisonment for not less than thirty days as provided in subparagraph (1) for such a defendant.

The defendant shall pay for the cost of the services provided by the residential alcohol treatment program; provided, however, that no person shall be excluded from said programs for inability to pay; and provided, further, that such person files with the court, an affidavit of indigency or inability to pay and that investigation by the probation officer confirms such indigency or establishes that payment of such fee would cause a grave and serious hardship to such individual or to the family of such individual, and that the court enters a written finding thereof. In lieu of waiver of the entire amount of said fee, the court may direct such individual to make partial or installment payments of the cost of said program.

(b) A conviction of a violation of subparagraph (1) of paragraph (a) shall revoke the license or right to operate of the person so convicted unless such person has not been convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction within a period of ten years preceding the date of the commission of the offense for which he has been convicted, and said person qualifies for disposition under section twenty-four D and has consented to probation as provided for in said section twenty-four D; provided, however, that no appeal, motion for new trial or exceptions shall operate to stay the revocation of the license or the right to operate. Such revoked license shall immediately be surrendered to the prosecuting officer who shall forward the same to the registrar. The court shall report immediately any revocation, under this section, of a license or right to operate to the registrar and to the police department of the municipality in which the defendant is domiciled. Additionally, upon a conviction of a violation of subparagraph (1) of paragraph (a), the director of environmental law enforcement may revoke or suspend the registration of the violator's snow or recreation vehicle.

(c) (1) Where the license, right to operate, or registration of a snow or recreation vehicle has been revoked under section twenty-six D or twenty-six E, or revoked under paragraph (b) and such person has not been convicted of a like offense or has not been assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction within a period of ten years preceding the date of the commission of the offense for which he has been convicted, the registrar shall not restore the license or reinstate the right to operate to such person unless the prosecution of such person has been terminated in favor of the defendant, until one year after the date of conviction; provided, however, that such person may, after the expiration of three months from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or educational purposes, which license shall be effective for not more than an identical twelve hour period every day on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control, and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of six months from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under such terms and conditions as he deems appropriate and necessary.

(2) Where the license or the right to operate of a person has been revoked under paragraph (b) and such person has been previously convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a

like violation within a period of ten years preceding the date of the commission of the offense for which such person has been convicted, the registrar shall not restore the license or reinstate the right to operate of such person unless the prosecution of such person has been terminated in favor of the defendant, until two years after the date of the conviction; provided, however, that such person may, after the expiration of six months from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or education purposes, which license shall be effective for not more than an identical twelve hour period every day on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and that such person shall have successfully completed the residential treatment program in subparagraph (4) of paragraph (a) of subdivision (1), or such treatment program mandated by section twenty-six D, and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of one year from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under such terms and conditions as he deems appropriate and necessary.

(3) Where the license or right to operate of any person has been revoked under paragraph (b) and such person has been previously convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction two times within a period of ten years preceding the date of the commission of the crime for which he has been convicted or where the license or right to operate has been revoked pursuant to section twenty-three due to a violation of said section or due to a prior revocation under paragraph (b) or under section twenty-six D or twenty-six E, the registrar shall not restore the license or reinstate the right to operate to such person, unless the prosecution of such person has terminated in favor of the defendant, until eight years after the date of conviction; provided however, that such person may, after the expiration of two years from the date of the conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or education purposes, which license shall be effective for not more than an identical twelve hour period every day, on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of four years from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt

with or brought under control and the registrar may, in his discretion, issue such a license under such terms and conditions as he deems appropriate and necessary.

(31/2) Where the license or the right to operate of a person has been revoked under paragraph (b) and such person has been previously convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like violation three times within a period of ten years preceding the date of the commission of the offense for which such person has been convicted, the registrar shall not restore the license or reinstate the right to operate of such person unless the prosecution of such person has been terminated in favor of the defendant, until ten years after the date of the conviction; provided, however, that such person may, after the expiration of five years from the date of the conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or education purposes which license shall be effective for an identical twelve hour period every day on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of eight years from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under the terms and conditions as he deems appropriate and necessary.

(3 3/4) Where the license or the right to operate of a person has been revoked under paragraph (b) and such person has been previously convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like violation four or more times within a period of ten years preceding the date of the commission of the offense for which such person has been convicted, such person's license or right to operate a snow or recreation vehicle shall be revoked for the life of such person, and such person shall not be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship; provided, however, that such license shall be restored or such right to operate shall be reinstated if the prosecution of such person has been terminated in favor of such person. An aggrieved party may appeal, in accordance with the provisions of chapter thirty A, from any order of the registrar of snow or recreation vehicles under the provisions of this section.

(4) Notwithstanding the foregoing, no new license shall be issued or right to operate be reinstated by the registrar to any person convicted of a violation of subparagraph (1) of paragraph (a) until ten years after the date of conviction in case the registrar determines upon investigation and after hearing that the action of the person so convicted in committing such offense caused an accident resulting in the death of

another, nor at any time after a subsequent conviction of such an offense, whenever committed, in case the registrar determines in the manner aforesaid that the action of such person, in committing the offense of which he was so subsequently convicted, caused an accident resulting in the death of another.

(d) For the purposes of subdivision (1) of this section, a person shall be deemed to have been convicted if he pleaded guilty or nolo contendere or was found or adjudged guilty by a court of competent jurisdiction, whether or not he was placed on probation without sentence or under a suspended sentence or the case was placed on file, and a license may be revoked under paragraph (b) hereof notwithstanding the pendency of a prosecution upon appeal or otherwise after such a conviction. Where there has been more than one conviction in the same prosecution, the date of the first conviction shall be deemed to be the date of conviction under paragraph (c) hereof.

(e) In any prosecution for a violation of paragraph (a), evidence of the percentage, by weight, of alcohol in the defendant's blood at the time of the alleged offense, as shown by chemical test or analysis of his blood or as indicated by a chemical test or analysis of his breath, shall be admissible and deemed relevant to the determination of the question of whether such defendant was at such time under the influence of intoxicating liquor; provided, however, that if such test or analysis was made by or at the direction of a police officer, it was made with the consent of the defendant, the results thereof were made available to him upon his request and the defendant was afforded a reasonable opportunity, at his request and at his expense, to have another such test or analysis made by a person or physician selected by him; and provided, further, that blood shall not be withdrawn from any party for the purpose of such test or analysis except by a physician, registered nurse or certified medical technician. Evidence that the defendant failed or refused to consent to such test or analysis shall not be admissible against him in a civil or criminal proceeding, but shall be admissible in any action by the registrar under paragraph (f) or in any proceedings provided for in section twenty-six N. When there is no evidence presented at a civil or criminal proceeding of the percentage, by weight, of alcohol in the defendant's blood, the presiding judge at a trial before a jury shall include in his instructions to the jury a statement of an arresting officer's responsibilities upon arrest of a person suspected to be operating a snow or recreation vehicle under the influence of alcohol and a statement that a blood alcohol test may only be administered with a person's consent; that a person has a legal right to take or not take such a test; that there may be a number of reasons why a person would or would not take such a test; that there may be a number of reasons why such test was not administered; that there shall be no speculation as to the reason for the absence of the test and no inference can be drawn from the fact that there was no evidence of a blood alcohol test; and that a finding of guilty or not guilty must be based solely on the evidence that was presented in the case. If such evidence is that such percentage was five one-hundredths or less, there shall be a permissible inference that such defendant was not under the influence of intoxicating liquor, and he shall be released from custody forthwith, but the officer who placed him under arrest shall not be liable for false arrest if

such police officer had reasonable grounds to believe that the person arrested had been operating a snow or recreation vehicle upon any such way or place while under the influence of intoxicating liquor; provided, however, that in an instance where a defendant is under the age of twenty-one and such evidence is that the percentage, by weight, of alcohol in the defendant's blood is two one-hundredths or greater, the officer who placed him under arrest shall, in accordance with subparagraph (2) of paragraph (f), suspend such defendant's license or permit and take all other actions directed therein, if such evidence is that such percentage was more than five one-hundredths but less than eight one-hundredths there shall be no permissible inference; and if such evidence is that such percentage was eight one-hundredths or more, there shall be a permissible inference that such defendant was under the influence of intoxicating liquor. A certificate, signed and sworn to, by a chemist of the department of the state police or by a chemist of a laboratory certified by the department of public health, which contains the results of an analysis made by such chemist of the percentage of alcohol in such blood shall be prima facie evidence of the percentage of alcohol in such blood.

Whoever operates a snow or recreation vehicle on the lands, waters and or improved, unimproved, public or private ways within the Commonwealth shall be deemed to have consented to submit to a chemical test or analysis of his breath or blood in the event that he is arrested for operating while under the influence of intoxicating liquor; provided, however, that no person shall be deemed to have consented to a blood test unless such person has been brought for treatment to a medical facility licensed under the provisions of section fifty-one of chapter one hundred and eleven; and provided, further, that no person who is afflicted with hemophilia, diabetes or any other condition requiring the use of anticoagulants shall be deemed to have consented to a withdrawal of blood. Such test shall be administered at the direction of a law enforcement officer, having reasonable grounds to believe that the person arrested has been operating a vessel under the influence of intoxicating liquor.

(f) If a person arrested for operating a snow or recreation vehicle on the lands, waters and or improved, unimproved, public or private ways within the Commonwealth while under the influence of intoxicating liquor refuses to submit to such test or analysis, after having been informed that his license, permit or right to operate motor vehicles shall be suspended and any certificate or numbers may be revoked for a period of one hundred and twenty days for such refusal, no such test or analysis shall be made, but the officer before whom such refusal was made shall immediately prepare a written report of such refusal. Each such report shall be made on a form approved by the registrar, and shall be sworn to under the penalties of perjury by the officer before whom such refusal was made. Each such report shall set forth the grounds for the officer's belief that the person arrested had been operating a vessel while under the influence of intoxicating liquor, and shall state that such person had refused to submit to such chemical test or analysis when requested by such officer to do so such refusal having been witnessed by another person other than the defendant. Each such report shall identify which police officer requested said

chemical test or analysis, and the other person witnessing said refusal. Each such report shall be sent forthwith to the registrar and to the director along with a copy of the notice of intent to suspend in any form, including electronic or otherwise, that the registrar deems appropriate. Upon receipt of such report, the registrar shall suspend any license or permit to operate motor vehicles issued to such person under chapter ninety or the right of such person to operate motor vehicles in the commonwealth under section ten for a period of one hundred and twenty days, and the director may revoke any and all certificates of number of any snow or recreation vehicle of such person and may refuse to issue any certificate of number to such vessels for a period of one hundred and twenty days. Said report shall constitute prima facie evidence of the facts set forth therein at any administrative hearing regarding any suspension specified in this section.

(g) Any person whose license, permit or right to operate motor vehicles has been suspended or whose certificate of number has been revoked under this paragraph shall be entitled to a hearing before the registrar which shall be limited to the following issues: (i) did the officer have reasonable grounds to believe that such person had been operating a snow or recreation vehicle on the lands, waters and or improved, unimproved, public or private ways within the Commonwealth, (ii) was such person placed under arrest and (iii) did such person refuse to submit to such test or analysis. If, after such hearing, the registrar finds on any one of the said issues in the negative, the registrar shall reinstate such license, permit or right to operate motor vehicles of such person and shall notify the director of such reinstatement. Upon receipt of such notification, the director shall reinstate such certificate of number to the vessel of such person.

Notwithstanding any of the foregoing, any person whose certificate of number has been revoked under this paragraph may at any time apply for and shall, within fifteen days, be granted a hearing before the director for the purpose of requesting the issuance of a certificate of number on the grounds of hardship and the director may, in his discretion, issue such certificate of number under such terms and conditions as he deems appropriate and necessary.

If a person fails to pay a civil administrative penalty assessed pursuant to this section within ninety days of the time it becomes final, such person shall be liable to the commonwealth for up to three times the amount of such penalty, together with the costs, plus interest from the time the civil administrative penalty became final, including all costs and attorney's fees incurred directly in the collection thereof. The rate of interest shall be the rate set forth in section six C of chapter two hundred and thirty-one. The director shall refuse to issue an original certificate of number or to renew the certificate of number for any snow or recreation vehicle owned by a person who fails to pay such civil administrative penalty and any related penalties or costs, until such payment is made in full.

(2) (a) Whoever, on the lands, waters and or improved, unimproved, public or private ways within the Commonwealth, operates a snow or recreation vehicle recklessly, or operates such a vehicle negligently so that the lives or safety of the public might be endangered, or upon a bet or wager or in a race, or whoever operates a snow or recreation vehicle for the purpose of making a record and thereby violates any provision of section seventeen or any regulation under section eighteen, or whoever without stopping and making known his name, residence and the register number of his snow or recreation vehicle goes away after knowingly colliding with or otherwise causing injury to any other vehicle or property, or whoever knowingly makes any false statement in an application for registration of a snow or recreation vehicle, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars or by imprisonment for not less than two weeks nor more than two years, or both; and whoever uses a snow or recreation vehicle without authority knowing that such use is unauthorized shall, for the first offense be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment for not less than thirty days nor more than two years, or both, and for a second offense by imprisonment in the state prison for not more than five years or in a house of correction for not less than thirty days nor more than two and one-half years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment; and whoever is found guilty of a third or subsequent offense of such use without authority committed within five years of the earliest of his two most recent prior offenses shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars or by imprisonment for not less than six months nor more than two and one-half years in a house of correction or for not less than two and one-half years nor more than five years in the state prison or by both fine and imprisonment. A summons may be issued instead of a warrant for arrest upon a complaint for a violation of any provision of this paragraph if in the judgment of the court or justice receiving the complaint there is reason to believe that the defendant will appear upon a summons.

There shall be an assessment of \$125 against a person who, by a court of the commonwealth, is convicted of, is placed on probation for or is granted a continuance without a finding for or otherwise pleads guilty to or admits to a finding of sufficient facts of operating a snow or recreation vehicle negligently so that the lives or safety of the public might be endangered pursuant to the provisions of this section; provided, however, that moneys collected pursuant to said assessment shall be deposited by the court with the treasurer into the Head Injury Treatment Services Trust Fund established by section 59 of chapter 10. At the discretion of the court, an assessment pursuant to this paragraph may be reduced or waived only upon a written finding of fact that such payment would cause the person against whom the assessment is imposed severe financial hardship. Such a finding shall be made independently of a finding of indigence for purposes of appointing counsel. If the person is sentenced to a correctional facility in the commonwealth and the assessment has not been paid, the court shall note the assessment on the mittimus.

(a^{1/2}) (1) Whoever operates a snow or recreation vehicle on the lands, waters and or improved, unimproved, public or private ways within the Commonwealth, and without stopping and making known his name, residence and the registration number of his snow or recreation vehicle, goes away after knowingly colliding with or otherwise causing injury to any person not resulting in the death of any person, shall be punished by imprisonment for not less than six months nor more than two years and by a fine of not less than five hundred dollars nor more than one thousand dollars.

(2) Whoever operates a snow or recreation vehicle on the lands, waters and or improved, unimproved, public or private ways within the Commonwealth and without stopping and making known his name, residence and the registration number of his snow or recreation vehicle, goes away to avoid prosecution or evade apprehension after knowingly colliding with or otherwise causing injury to any person shall, if the injuries result in the death of a person, be punished by imprisonment in the state prison for not less than two and one-half years nor more than ten years and by a fine of not less than one thousand dollars nor more than five thousand dollars or by imprisonment in a jail or house of correction for not less than one year nor more than two and one-half years and by a fine of not less than one thousand dollars nor more than five thousand dollars. The sentence imposed upon such person shall not be reduced to less than one year, nor suspended, nor shall any person convicted under this paragraph be eligible for probation, parole, or furlough or receive any deduction from his sentence until such person has served at least one year of such sentence; provided, however, that the commissioner of correction may on the recommendation of the warden, superintendent or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this paragraph, a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution or to engage in employment pursuant to a work release program.

(3) Prosecutions commenced under subparagraph (1) or (2) shall not be continued without a finding nor placed on file.

(b) A conviction of a violation of paragraph (a) or paragraph (a^{1/2}) of subdivision (2) of this section shall be reported forthwith by the court or magistrate to the registrar, who may in any event, and shall unless the court or magistrate recommends otherwise, revoke immediately the license or right to operate of the person so convicted, and no appeal, motion for new trial or exceptions shall operate to stay the revocation of the license or right to operate. If it appears by the records of the registrar that the person so convicted is the owner of a snow or recreation vehicle or has exclusive control of any snow or recreation vehicle as a manufacturer or dealer or otherwise, the registrar may revoke the certificate of registration of any or all snow or recreation vehicles so owned or exclusively controlled.

(c) The registrar, after having revoked the license or right to operate of any person under paragraph (b), in his discretion may issue a new license or reinstate the right to operate to him, if the prosecution has terminated in favor of the defendant. In addition, the registrar may, after an investigation or upon hearing, issue a new license or reinstate the right to operate to a person convicted in any court for a violation of any provision of paragraph (a) or (a^{1/2}) of subdivision (2); provided, however, that no new license or right to operate shall be issued by the registrar to: (i) any person convicted of a violation of subparagraph (1) of paragraph (a^{1/2}) until one year after the date of revocation following his conviction if for a first offense, or until two years after the date of revocation following any subsequent conviction; (ii) any person convicted of a violation of subparagraph (2) of paragraph (a^{1/2}) until three years after the date of revocation following his conviction if for a first offense or until ten years after the date of revocation following any subsequent conviction; (iii) any person convicted, under paragraph (a) of using a snow or recreation vehicle knowing that such use is unauthorized, until one year after the date of revocation following his conviction if for a first offense or until three years after the date of revocation following any subsequent conviction; and (iv) any person convicted of any other provision of paragraph (a) until sixty days after the date of his original conviction if for a first offense or one year after the date of revocation following any subsequent conviction within a period of three years.

The registrar, after investigation, may at any time rescind the revocation of a license or right to operate revoked because of a conviction of operating a snow or recreation vehicle upon any way or in any place to which the public has a right of access or any place to which members of the public have access as invitees or licensees negligently so that the lives or safety of the public might be endangered. The provisions of this paragraph shall apply in the same manner to juveniles adjudicated under the provisions of section fifty-eight B of chapter one hundred and nineteen.

(3) The prosecution of any person for the violation of any provision of this section, if a subsequent offense, shall not, unless the interests of justice require such disposition, be placed on file or otherwise disposed of except by trial, judgment and sentence according to the regular course of criminal proceedings; and such a prosecution shall be otherwise disposed of only on motion in writing stating specifically the reasons therefor and verified by affidavits if facts are relied upon. If the court or magistrate certifies in writing that he is satisfied that the reasons relied upon are sufficient and that the interests of justice require the allowance of the motion, the motion shall be allowed and the certificate shall be filed in the case. A copy of the motion and certificate shall be sent by the court or magistrate forthwith to the registrar.

(4) Any officer empowered to enforce this section may arrest without a warrant any person who the officer has probable cause to believe has violated or is violating any provision of this section or any rule or regulation made under authority hereof.

500 SECTION 2. In Paragraph 5 of said section 26, strike from the word “proof” in line 5 through the word
501 “therewith” in line 7, replacing it with the following:—

502 “trail pass membership to the Snowmobile Association of Massachusetts (S.A.M.) or other state-wide,
503 recognized organization as determined by the snow mobile law administrator pursuant to the guidelines
504 set for by the Director of the Division of Law Enforcement;”

505 SECTION 3. In said paragraph 5 of said section 26 strike from the word “or” in line 7 through the end of
506 line 9.

507 Section 4. In said paragraph 5 of said section 26, insert after the word “on” in line 1 the following:

508 “public or”